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/ZHW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HAN et al.

Atty. Ref.: 4290-4

Serial No. 10/690,665

TC/A.U.: 1763

Filed: October 23, 2003

Examiner: G. Goudreau

For: METHOD FOR AVOIDING POLYSILICON FILM OVER  
ETCH ABNORMAL

\* \* \* \* \*

July 28, 2006

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RENEWED PETITION UNDER 37 C.F.R. §1.137(b)  
AND  
CONDITIONAL ALTERNATIVE PETITION  
UNDER 37 C.F.R. §1.137(a)**

Reconsideration is requested of the decision mailed June 12, 2006 dismissing a petition to revive this unintentionally abandoned application under 35 C.F.R. §1.137(b).

In addition, should the petition under 37 C.F.R. §1.137(b) be denied, then petition for revival under 37 C.F.R. §1.137(a) is hereby made.

A. Unintentional Abandonment

The June 12, 2006 decision dismissed the petition to revive under 37 C.F.R. §1.137(b) due to an alleged insufficiency in the petition with respect to required items (1) and (3);

(i) Required Item (1)

The only alleged insufficiency for item (1), the required reply, was payment of the issue fee (\$1400) and publication fee (\$300) that would have been due on or before November 29, 2005 -- unless applicants had filed an RCE. Applicant's petition filed January 17, 2006 did include payment of an RCE fee (\$790). Since the RCE and amendment would have constituted a complete self-sufficient filing prior to November 29, 2005, such was believed to satisfy this requirement under 37 C.F.R. §1.137(b). However, as a safety precaution, page 2 of the originally filed petition also explicitly authorized charging of any required additional fee (e.g., the unpaid issue fees) to our Account No. 14-1140. General authorization to charge this account for any future fee deficiency was also given in the originally filed application transmittal sheet on October 23, 2003. Thus, in fact, there was no deficiency for required petition item (1). Nevertheless, to avoid all doubt, a payment of \$1,700 is now attached hereto covering the issue and publication fees stated in the Notice of Allowance mailed August 29, 2005 -- even though, as is evident on this record, payment of such fees would be pre-mature upon revival in light of the proffered RCE and amendment.

(ii) Required Item (3)

The attached factual declaration of Helen Lee explains and explicitly states that the entire delay in filing a petition for revival was unintentional -- i.e., it was due to inadvertent error on her part. In addition, although no formal requirement was made,

factual circumstances explaining how the unintentional abandonment/delay occurred have been submitted -- and now amplified in Ms. Lee's accompanying declaration.

As is clearly shown, human error caused an unintended miscommunication which, in turn, caused unintended abandonment. The delay from recognition of this error on or about December 7, 2005 until the filing of the petition to revive on January 17, 2006 (with factual declaration) simply reflects the intervening holidays and the time required for the undersigned to investigate relevant facts (in view of having earlier received an instruction not to pay issue fees), obtain an executed factual declaration, prepare and file the petition papers. It took the U.S. Patent and Trademark Office approximately 5 months to respond to the petition. Surely it was reasonable for the undersigned to take approximately 5 weeks (including approximately 2 weeks of a long holiday period) to research and prepare the petition papers for filing.

The case law cited in the 6/12/06 decision is inapplicable to the facts now at issue. The assignee originating instructions did not reconsider or change its mind as to the course of action that should have been taken. Furthermore, if good faith human error is never to be considered as a possible cause of "unintentional" abandonment, then presumably no application could ever be revived because unintentionally abandoned. At the ultimate root of any failure to respond to an outstanding action must be some human error -- albeit an unintentional (i.e., inadvertent) error. The facts here show that the abandonment was unintended -- even by the persons instructing the undersigned because

they intended to follow the spread sheet instruction of the assignee UMC. their erroneous initial understanding of such instruction was surely "unintended" in any meaningful sense.

B. Unavoidable Abandonment

The requirements for reviving this application under 37 C.F.R. §1.137(a) are also met:

- (1) the required reply has already been submitted -- see above.
- (2) The further petition fee for revival of an unavoidably abandoned application is \$500 pursuant to 37 C.F.R. 1.17(l). Authority is hereby given to charge such fee to our Account No. 14-1140 should this fee be required to revive this application.
- (3) For reasons already of record, due to unintended human error, the abandonment of this application became unavoidable. Although the error was discovered shortly after abandonment occurred, unavoidable intervening holidays and communication processes also made delay until January 17, 2006 to file the above discussed initial petition for revival unavoidable. The U.S. Patent and Trademark Office decision taking a further five months until June 12, 2006 was also unavoidable from the applicant's perspective. Finally, the

June 12, 2006 decision itself provides 2 months (extendable) for response and all delay since first learning of the U.S. Patent and Trademark Office decision dismissing the initial petition was required for the undersigned to ascertain additional facts herein explained and to prepare and file these papers -- and thus also unavoidable. That is, the entire delay from November 29, 2005 until the filing of this petition was unavoidable.

- (4) Since this application (a) is a utility application and (b) was filed after June 8, 1995, no terminal disclaimer is required.

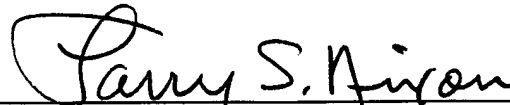
Summary

Accordingly, revival of this application under either 37 C.F.R. §1.137(a) or (b) is believed appropriate and is requested.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



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Reg. No. 25,640

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Sir:

**DECLARATION OF HELEN LEE**  
**IN SUPPORT OF PETITION TO REVIVE**

I, Helen Lee, hereby declare and say of my own personal knowledge and belief:

1. THAT I am the Manager of the Administrative Department of Hitek International Patent & Trademark Office in Taipei, Taiwan and have held that position for approximately one year.

2. THAT the above-identified US patent application was filed on behalf of the assignee United Microelectronics Corporation ("UMC") at Hitek's instruction to Larry S. Nixon at Nixon & Vanderhye PC who also prosecutes this application in the U.S. Patent and Trademark Office pursuant to instructions the assignee receives from Hitek.

3. THAT I received the attached Exhibit A instructional spread-sheet from United Microelectronics Corporation by email on Friday, November 18, 2005 including instructions for the above-identified US application Reference No. UMCD-2002-0063 on the middle line). An English translation of this spread-sheet is attached as Exhibit B.

4. THAT, in the press of much other activity, I initially saw the instruction "not to pay issue fee" and erroneously did not read the accompanying remarks explaining why the issue fee was not to be paid. Based on this initial partial understanding of United Microelectronics Corporation's instruction for this case, my Administrative Assistant, Sunny Huang, erroneously sent facsimile instructions to Mr. Nixon on Monday, November 21, 2005 to let this application go abandoned by failure to pay the issue fees. A copy of this facsimile note is attached as Exhibit C.

5. THAT I subsequently realized my error and indicated to Mr. Nixon (via my Assistant, Sunny Huang) in a subsequent facsimile on December 7, 2005 that this application would need to be revived and amended according to the belatedly recognized UMC instructional remarks explaining why the issue fee was not to be paid. A copy of this facsimile note is attached as Exhibit D.

6. THAT the assignee UMC has never intended to abandon this application.

7. THAT because of my inadvertent and unintentional misunderstanding, erroneous instructions were given to Mr. Nixon and the abandonment of this application

(and the entire delay in a filing grantable petition for revival) was therefore unintentional insofar as the assignee UMC is concerned.

8. THAT due to my inadvertent and unintentional misunderstanding, the abandonment of this application also was thereafter unavoidable unless and until my error was discovered and corrected. Unfortunately such discovery and correction did not occur until after the unextendable due date of November 29, 2005 for payment of issue and publication fees. Therefore, the abandonment of this application was also unavoidable due to inadvertent and undetected human error.

9. THAT I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize this validity of the application or any patent issued thereon.

2006. 7. 28  
Date

Helen Lee  
Helen Lee



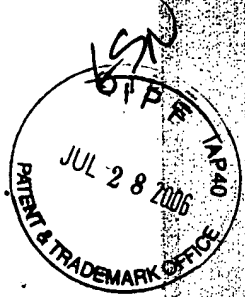


UMCD Ref. No.	Response Date	Official Deadline	Patent Agent	Hitek Ref. No.	Category	UMC Engineer	Pay Issue Fee	Not to Pay Issue Fee	PE Remarks
UMCD-2003-0099	2005/11/02	2005/11/25	Hitek	US92091/PI		MS	V		The patented object will be rarely utilized, so the CIP procedure is not required.
UMCD-2002-0063	2005/10/29	2005/11/29	Hitek	US91175/PI		Ling		V	Amendment requires before paying issue fee. If Examiners provide any suggestions, RCE procedure (modify the "third surface of the first polysilicon layer") will be applied for. Grade C maintained.
UMCD-2003-0150	2005/11/07	2005/12/07	Hitek	US92168/PI		Jinsheng	V		

聯電案號	事務所期控	官方期限	代理人	代理人權號	管理分類	UMC負責工程師	領證	不領證	CIP	RCE	CA	PE備註
UMCD-2003-0099	2005/11/2	2005/11/25	海天	US92091/PI		M S	V					本案申請專利標的在未來至上使用之機率不高故領證不作CIP
UMCD-2002-0063	2005/10/29	2005/11/29	海天	US91175/PI		Ling		V				領證前修正, 如果審查委員有意見, 再做 RCE(modify the "third surface of the first polysilicon layer"), 維持 C grade
UMCD-2003-0150	2005/11/7	2005/12/7	海天	US92168/PI		Jinsheng	V					

# Hitek

海天國際專利商標事務所  
Hitek International Patent & Trademark Office



## FACSIMILE TRANSMITTAL SHEET

TO: <b>Larry S. Nixon</b>	FROM: <b>Sunny Huang Ext.: 220</b>
COMPANY: <b>Nixon &amp; Vanderhye P.C.</b>	DATE: <b>November 21, 2005</b>
FAX NUMBER: <b>+1-703-816-4100</b>	TOTAL PAGES INCLUDING COVER: <b>1</b>
PHONE NUMBER: <b>+1-703-816-4000</b>	SENDER'S REFERENCE NUMBER: <b>HUS91175/PI</b>
Re: U.S. Patent Application No. <b>10/690,665</b>	YOUR REFERENCE NUMBER: <b>4290-4</b>

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY

### NOTES/COMMENTS:

Dear Sirs,

Thank you for informing us the Notice of Allowability regarding the above-identified application. Please be informed that the applicant decides to ABANDON it (will not pay the issue fee). Please proceed accordingly and send us the final invoice for closing the case as soon as possible. If there is no such invoice, please advise by return fax or email.

Because applicant decide not pay the issue fee, **please kindly cancel the invoice #468269**. We thank you in advance for your kind assistance and cooperation in this matter.

Sincerely yours,  
Sunny Huang/ Administrative assistant  
of Hitek Int'l Patent & Trademark Office

EXHIBIT C

104 台北市南京東路 2 段 111 號 8 樓之 3  
8F-3, NO.111, SEC. 2, NAN-KING E. RD., TAIPEI, TAIWAN R.O.C.  
TEL:(886-2)2516-4900 FAX:(886-2)2516-4901

NEST AVAILABLE COPY



海天國際專利商標事務所  
Hitek International Patent & Trademark Office

FACSIMILE TRANSMITTAL SHEET

TO: Larry S. Nixon	FROM: Sunny Huang Ext. 220
COMPANY: Nixon & Vanderhye P.C.	DATE: December 7, 2005
FAX NUMBER: +1-703-816-4100	TOTAL PAGES INCLUDING COVER: 1
PHONE NUMBER: +1-703-816-4000	SENDER'S REFERENCE NUMBER: HUS91175/PI
Re: U.S. Patent Application No. 10/690,665	YOUR REFERENCE NUMBER: 4290-4

☒ URGENT    ☒ FOR REVIEW    ☐ PLEASE COMMENT ☒ PLEASE REPLY

NOTES/COMMENTS:

Dear Sirs,

Thanks for your letter and invoice dated Nov. 23, 2005, we have duly received them.

The Invoice #473803 rendered on Nov. 28, 2005 is repeated; please cancel it.

By the way, we would like to file a petition to **revive** this application. Besides paying the Issue Fee, we will amend the content of the application.

We are preparing, and will give you further instruction later. Please advise us if you need any necessary information regarding to the affair of revival.

Thank you for your assistance and cooperation.

Sincerely yours,  
Sunny Huang/ Assistant  
Hitek International Patent & Trademark Office

EXHIBIT D

104 台北市南京東路 2 段 111 號 8 樓之 3  
8F-3, NO. 111, SEC. 2, NAN-KING E. RD., TAIPEI, TAIWAN R.O.C.  
TEL: (886-2) 2516-4900 FAX: (886-2) 2516-4901

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